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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/522,709	03/10/2000	Fernando L. Alvarado	43920-032	5984
20277	7590	11/05/2003	EXAMINER	
MCDERMOTT WILL & EMERY 600 13TH STREET, N.W. WASHINGTON, DC 20005-3096				SNAPP, SANDRA S
ART UNIT		PAPER NUMBER		
		3624		

DATE MAILED: 11/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/522,709	ALVARADO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Sandra Snapp	3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 12 October 2000.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 17 and 18 is/are allowed.

6) Claim(s) 1-16, 19 & 20 is/are rejected.

7) Claim(s) 7 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 10 March 2000 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.

4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Objections*

Claim 7 is objected to because of the following informalities: the phrase “producing portfolio” in line 6 should be “producing *a* portfolio.” Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4, 9, 10, 12, 13, 15, 16, 19 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 4, 10, 13 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: what elements are required for a portfolio, what does the portfolio consist of. Also, it is confusing whether the applicant is trying to claim an apparatus or a method since the portfolio of claim 4 appears to be an apparatus, while it depends from a method claim 3.

Claims 9, 10, 12, 13, 15, 16, 19 and 20 are indefinite because they include the variables z', y' P', yet they do not define what the “prime” variable are, only what the non-prime variables are.

### *Claim Rejections - 35 USC § 101*

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims do not recite any technology. The Board of Patent Appeals and Interferences has taken the position that a claim that lacks any specific technology is “nothing more than [an] abstract idea which is not tied to any technological art and is not a useful art as contemplated by the Constitution.” *Ex parte Bowman*, 61 USPQ2d 1669, 1671 (Bd. Pat. App. & Inter. 2001)(Unpublished).

### ***Allowable Subject Matter***

Claims 17 & 18 are allowed.

Claims 19 & 20 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

The following is a statement of reasons for the indication of allowable subject matter: none of the prior art of record shows or teaches a method for managing risk in a market that models locational prices of the commodity in the market as a linear combination of congestion prices for congestible lines in the network, and produces a combination of price risk instruments for the market in a proportion such that an effect of the congestion prices for the congestible lines on the locational prices of the commodity is reduced. In particular, none of the art identifies and illustrates congestion prices for congestible lines in the network.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Sandretto, Melnikoff, Edesess, Chennault, Alvarado and Luskin et al. patents are directed to portfolio management considering risks involved. The Shepard, Wagner, Garber, and Sibley, Jr. patents are directed to electronic trading systems. The Sober patent is for an apparatus for insuring futures contracts against catastrophic loss. The Mistr, Jr. patent is for a communications system among energy suppliers and purchasers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sandra Snapp whose telephone number is 703-305-6940. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on 703-308-1065. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

ss  
*[Signature]*

*Vincent Millin*

VINCENT MILLIN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600